

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff- Appellee,

v

LEWIS HENRY MCCLAIN BEY,

Defendant-Appellant.

UNPUBLISHED

May 7, 1999

No. 204647

Jackson Circuit Court

LC No. 96-078533 FH

Before: Wilder, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of assault of a prison employee, MCL 750.197c; MSA 28.394(3). The trial court sentenced defendant to eight to fifteen years' imprisonment. We affirm.

I

Defendant contends that he was denied a fair trial because the trial court instructed the jury pursuant to CJI2d 7.15 and 7.16, rather than CJI2d 7.22. However, at trial defendant did not object to the instructions or request that CJI2d 7.22 be given. Therefore, our review is limited to the issue whether relief is necessary to avoid manifest injustice. *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995). Manifest injustice occurs where the erroneous or omitted instruction pertains to a basic and controlling issue in the case. *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997). As a general rule, this Court is hesitant to reverse a lower court because of an error in jury instructions where no objection was raised at trial. *People v Hess*, 214 Mich App 33, 36; 543 NW2d 332 (1995).

After reviewing the record, we find that relief is not necessary to avoid manifest injustice. See *Haywood, supra*. Evidence was presented that defendant used deadly force when the complainant testified that defendant attempted to throw her over a railing and that defendant choked her. See *People v Clark*, 172 Mich App 407, 418; 432 NW2d 726 (1988); *People v Pace*, 102 Mich App 522, 534; 302 NW2d 216 (1980). Although defendant presented witnesses who denied that he tried to throw the complainant over a railing, jury instructions must not exclude consideration of material

issues and theories for which there is evidence in support. See *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994).

II

Next, defendant contends that the trial court erred in denying his request for discovery of the personnel files of the complainant and two other witnesses, or in the alternative, conducting an in camera inspection of the files. On appeal, a trial court's grant or denial of a discovery motion is reviewed for an abuse of discretion. *People v Stanaway*, 446 Mich 643, 680; 521 NW2d 557 (1994).

After reviewing the record, we conclude that the trial court did not abuse its discretion in denying defendant's requests for discovery of the personnel files. Defendant did not provide the court with any demonstrable facts indicating that there was a reasonable probability that the files were likely to contain material information. See *id.* at 677. Thus, defendant did not satisfy his burden of showing that the information contained in the files was necessary for the preparation of his defense and not simply part of a fishing expedition. See *id.* at 680, quoting *People v Maranian*, 359 NW2d 361, 368; 102 NW2d 568 (1960).

III

Finally defendant maintains that he was improperly convicted under a statute intended to apply to prison escapes. Statutory interpretation is a question of law reviewed de novo on appeal. *People v Parker*, 230 Mich App 677, 685; 584 NW2d 753 (1998).

We reject defendant's argument. This Court has previously held that MCL 750.197c; MSA 28.394(3) applies to assaults on prison employees even when not committed in the course of an escape or attempted escape. *People v Terry*, 217 Mich App 660, 661-662; 553 NW2d 23 (1996); *People v Boyd*, 102 Mich App 112, 116; 300 NW2d 760 (1980). Defendant contends that *Boyd* was incorrectly decided; however, we disagree. The express language of the statute evidences the Legislature's intent to expand the class of conduct subject to punishment under MCL 750.197c; MSA 28.394(3) to include assaults on prison employees generally.

Additionally, because the intent of the Legislature is clear, defendant's claims that *Boyd* represents an unconstitutional exercise of authority by this Court in violation of the separation of powers doctrine, that the statute violates fundamental fairness and the Supremacy Clause of the United States Constitution, and that his sentence amounts to cruel and unusual punishment, are all without merit. See *People v Price*, 214 Mich App 538, 542; 543 NW2d 49 (1995) (stating that the Legislature has the sole power to define crimes and set punishments); *People v Northrop*, 213 Mich App 494, 499; 541 NW2d 275 (1995) (noting that a legislatively mandated sentence is presumed to be valid).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra